U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 May 2006

CASE No. 2004-BLA-5522

In the Matter of

GWENDOLYN M. FORD,
SURVIVOR OF JAMES G. FORD,
Claimant

v.

ISLAND CREEK COAL CO.,
Employer

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-Interest.

Appearances:

J. Michael Anderson, Esquire
For the Claimant

Ashley M. Harman, Esquire
For the Employer

Before: MICHAEL P. LESNIAK
Administrative Law Judge

DECISION AND ORDER – DENYING BENEFITS

This proceeding arises from a widow's claim for survivor's benefits under the Black Lung Benefits Act, 30 U.S.C. § 901 *et seq.* (the Act). The Act and implementing regulations, 20 C.F.R. Parts 410, 718, and 727 (Regulations), provide compensation and other benefits to coal miners who are totally disabled by pneumoconiosis and to the surviving dependents of coal miners whose death was due to pneumoconiosis.

The Act and Regulations define pneumoconiosis (commonly known as black lung disease, coal workers' pneumoconiosis or CWP) as a chronic dust disease of the lungs and its sequelae, including respiratory and pulmonary impairments arising out of coal mine employment. 20 C.F.R. § 725.101.

PROCEDURAL HISTORY

The miner filed a claim for benefits with the Department of Labor (DOL) on March 27, 1990. His claim was awarded by Administrative Law Judge Frederick Neusner on May 29, 1993. Judge Neusner found the chest x-ray reports established pneumoconiosis since he gave the benefit of the doubt to Claimant, and he further found the medical opinion report of Dr. Rassmussen outweighed the contrary evidence of record and established the presence of pneumoconiosis which arose out of coal mine employment. All the physicians agreed the miner was totally disabled, and Judge Neusner credited Dr. Rassmussen's report over the contrary medical reports of record in determining that the miner had established his total disability was due, at least in part, to pneumoconiosis. Judge Neusner's award of benefits was affirmed by the Benefits Review Board on September 27, 1994. (DX 1)[1].

The miner died on September 9, 2002, and his widow filed a claim for survivor's benefits on October 3, 2002. (DX 3). The District Director issued a Proposed Decision and Order on September 12, 2003 in which he denied the claim for failure to establish that the miner's death was due to pneumoconiosis. (DX 22). On September 24, 2003, Claimant objected to the findings of the District Director and requested a formal hearing before an ALJ. (DX 31).

On October 5, 2005, I held a hearing in Beckley, West Virginia. The Claimant and Employer, both represented by counsel, were afforded the full opportunity to present evidence and argument. I admitted Director's Exhibits 1–37 and Employer's Exhibits 1, 3-5, 8-9 at the hearing. (TR 8). Employer's Exhibits 2, 6, and 7 were excluded because they exceed evidentiary limitations set forth in the regulations. (TR 9).

The parties stipulated to Employer's proper designation as the Responsible Operator and to at least twenty-five years of qualifying coal-mine employment by the deceased miner. In addition, the parties stipulated that the Claimant is the surviving spouse. (TR 11).

ISSUES

1. Whether the miner had pneumoconiosis[2];

2. Whether the miner's pneumoconiosis arose out of his coal mine employment; and,

3. Whether the miner's death was due to pneumoconiosis as provided by § 718.205 (c).

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[1] The following abbreviations are used in this opinion: DX = Director's exhibit, EX = Employer's/Carrier's exhibit, CX = Claimant's exhibit, TR = Transcript of the October 5, 2005 hearing.

[2] The doctrine of collateral estoppel would not apply to this survivor's claim to preclude Employer from relitigating the issue of pneumoconiosis. Although pneumoconiosis was established in the miner's claim and there was no autopsy evidence admitted in the survivor's claim, there has been a change in the law. *Collins v. Pond Creek Mining Company*, 22 B.L.R. 1-229 (2003) determined that collateral estoppel cannot apply when a finding of pneumoconiosis made in a miner's claim was decided prior to the decision in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). *Collins* stated "because the change in the law in *Compton* affects the fact-finder's weighing of the evidence, the issue is not identical to the one previously litigated." *Collins* at 1-233.

FINDINGS OF FACT

Length of Coal Mine Employment

The parties agree, and I find that the evidence of record establishes that the miner was a coal miner within the meaning of the Act and Regulations for at least twenty-five years. (TR 11, DX 5, 6, 8, 9).

Claimant's Testimony

The Claimant did not testify at the hearing. The record includes a marriage certificate which establishes that Claimant, Gwendolyn Marlene Dorsey, married the deceased miner, James Ford, on May 21, 1964. (DX 11).

Medical Evidence

The record includes the evidence submitted with the miner's claim for benefits as set forth in Judge Neusner's decision of May 20, 1993. However, pursuant to the Board's holding in *Church v. Kentland-Elkhorn Coal Corp.*, BRB Nos. 04-0617 BLA and 04-0617 BLA-A (Apr. 8, 2005) (unpub.), medical evidence submitted in a living miner's claim is not automatically admissible in a survivor's claim filed after January 19, 2001. Rather, in a survivor's claim, the medical evidence from the prior living miner's claim must be designated as evidence by one of the parties in order for it to be included in the record relevant to the survivor's claim. Furthermore, the Board held that the medical evidence from the living miner's claim must meet the limitations under 20 C.F.R. § 725.414 to be considered in the survivor's claim and medical opinion evidence in the survivor's claim should consider only evidence that is properly admitted.

The following evidence has been designated as evidence by one of the parties:

Chest X-ray

Exh.#	**X-ray Date**	**Physician/Qualifications**	**Interpretation**
EX 5	03/13/89	Wiot, BCR, B	No pneumoconiosis
DX 17	07/13/90	Gaziano, BCR, B	1/0 s, t
EX 5	12/16/93	Wiot, BCR, B	No pneumoconiosis

Pulmonary Function Studies

No new pulmonary function studies were submitted.

Arterial Blood Gas Studies

Any new blood gas studies included in the hospital records which were submitted with the survivor's claim were taken while the miner was receiving supplemental oxygen.

Physicians' Reports

Records from the Allegheny Regional Hospital indicate the miner was hospitalized from April 24 to 29, 2002 and Dr. Aubrey Hall was his treating physician. During this hospitalization, a needle biopsy showed evidence of squamous cell carcinoma, and a CT lung scan was read by Dr. B. Banning as showing primary lung carcinoma with other chronic changes present. Dr. Hall noted the miner was discharged on April 29, 2002 with a referral to be seen by the oncology department. Dr. Hall listed the following on the discharge report: 1) severe chronic obstructive pulmonary disease, cor pulmonale, squamous cell carcinoma of the left lung, mediastinal lymphadenopathy, and right hilar mediastinal lymphadenopathy; 2) GERD; 3) history of SVT; 4) diabetes mellitus; and 5) history of L5 radiculitis with spinal stenosis. (DX 14).

The miner was hospitalized again from August 15 to 28, 2002. Dr. Hall stated the primary problems treated during this hospitalization were metastatic squamous cell carcinoma of the left lung with viral pneumonia, respiratory failure, hypotension, and pancytopemia. Dr. Hall also noted the diagnoses of chronic obstructive pulmonary disease, cor pulmonale, diabetes mellitus, lumbar sacral radiculopathy with spinal stenosis, history of SVT, and GERD. The records indicate that the miner underwent radiation treatment for palliative purposes as the diagnosed squamous cell carcinoma was not treatable. Dr. Hall reported the miner was treated with medications, oxygen, and a blood transfusion. He stated the miner's pneumonia in the right lung cleared during the hospitalization. However, he stated the miner's prognosis was very poor. Dr. Hall also stated he had arranged for hospice care. (DX 14).

The miner died at home on September 9, 2002. Dr. Hall filled out the death certificate. On that document, Dr. Hall listed the immediate cause of death as carcinoma of the left lung. Dr. Hall listed as another significant condition contributing to death but not resulting in the underlying cause of death as black lung. (DX 12).

On February 18, 2003, Dr. Hall stated on a questionnaire that the miner had lung disease due to coal mine employment, and he stated the miner had carcinoma of the left lung with metastases to the bone and that black lung contributed to this. Dr. Hall stated his diagnosis was based on chest x-ray findings and the diagnosis of black lung was due to the miner's coal mine dust exposure. Dr. Hall also noted the miner had been a smoker for 50+ years. He stated he could not partition the effect of the miner's black lung and smoking, but he estimated 60% of the miner's disability was due to black lung and 40% was due to chronic obstructive pulmonary disease. Dr. Hall also checked a box stating pneumoconiosis did not contribute to or hasten the miner's death, but then he also handwrote on the form that the miner's death was due to lung cancer with black lung contributing. Dr. Hall also stated he had prescribed home oxygen for the miner for treatment of chronic obstructive pulmonary disease and shortness of breath. Dr. Hall stated he treated the miner from July 10, 2001 through September 9, 2002. (DX 15).

Dr. J. Castle, a pulmonary specialist, reviewed the records on August 5, 2003. Dr. Castle stated there was no evidence of coal workers' pneumoconiosis radiographically based on his own reading and readings by other physicians. He also stated it was his opinion the CT lung scan of April 25, 2002 was negative for pneumoconiosis. In addition, Dr. Castle stated the physiologic studies showed moderate or moderately severe airway obstruction with some degree of reversibility which was consistent with tobacco smoke induced chronic airway obstruction. Dr. Castle stated the miner then developed squamous cell bronchogenic carcinoma involving the

mediastinum and bony metastasis which was related to cigarette smoking and not coal mine dust exposure or coal workers' pneumoconiosis. Dr. Castle reiterated his finding that there was no evidence of coal workers' pneumoconiosis but rather that the miner had tobacco smoke induced chronic obstructive pulmonary disease. Dr. Castle stated the miner's death was not caused by, contributed to, or hastened by coal workers' pneumoconiosis or coal mine dust exposure. Rather, he stated the miner's death was due to the consequences of widespread, metastatic bronchogenic carcinoma. (DX 18).

On June 3, 2004, Dr. Castle reviewed additional evidence. He noted again the majority of chest x-ray readings were negative, and he credited those negative x-ray readings. Dr. Castle also noted Dr. Scatarige's negative reading of the April 25, 2002 CT lung scan. Dr. Castle concluded again that the miner was totally disabled by tobacco smoke induced chronic obstructive pulmonary disease and not by coal workers' pneumoconiosis. Dr. Castle reiterated his earlier opinion that the miner's squamous cell bronchogenic carcinoma was related to his tobacco smoking habit and not to coal mine dust exposure or coal workers' pneumoconiosis. He again concluded the miner's death was not caused by, contributed to by, or hastened by coal workers' pneumoconiosis but was caused by the widespread metastatic bronchogenic carcinoma. (EX 3).

Dr. Castle reviewed additional evidence prior to a deposition taken on January 25, 2005. He reiterated his written opinions. In addition, Dr. Castle cited to medical authorities establishing that coal mine dust is not carcinogenic and that exposure to coal mine dust is not a cause of cancer. Dr. Castle also pointed out the contradictory answers by Dr. Hall on the February 18, 2003 questionnaire. (EX 8).

Dr. K. Hippensteel, a pulmonary specialist, reviewed the records on August 7, 2003 including his own chest x-ray readings and CT lung scan reading. Dr. Hippensteel stated the miner's death was due to metastatic squamous cell carcinoma due to extensive cigarette smoking. Dr. Hippensteel also stated the development of the metastatic squamous cell carcinoma had no association with the miner's coal mine dust exposure as established by the medical literature. Dr. Hippensteel stated the majority of the chest x-ray readings were negative and any pulmonary impairment the miner had was due to his cancer as a result of his long history of cigarette smoking. He also stated the CT lung scan was negative for pneumoconiosis. Dr. Hippensteel stated the obstructive disease demonstrated on pulmonary testing is more compatible with cigarette smoke induced pulmonary impairment. Based on the negative chest x-ray readings, Dr. Hippensteel opined that it is unlikely that coal workers' pneumoconiosis caused any impairment. Dr. Hippensteel included his own reading of the April 25, 2002 lung scan, and he stated it showed a large neoplasm in the left upper lung with metastasis to the hilar and mediastinal lymph nodes. (DX 20).

On June 2, 2004, Dr. Hippensteel reviewed additional records. Again, Dr. Hippensteel stated that most of the chest x-ray readings were negative and attributed the lung disease present to the miner's smoking history which led to the development of squamous cell carcinoma and death. Dr. Hippensteel concluded that there is no association between the miner's cancer and coal workers' pneumoconiosis. (EX 9).

At a deposition taken on January 25, 2005, Dr. Hippensteel stated he had reviewed additional records. He reiterated his earlier statements that the miner's lung cancer was not

related to coal mine dust exposure based on the medical literature. In addition, Dr. Hippensteel reiterated his earlier finding the miner did not have coal workers' pneumoconiosis based on the majority negative readings of chest x-ray films, the negative CT scan, and the pathology which was negative for pneumoconiosis. Thus, Dr. Hippensteel concluded, the miner did not have pneumoconiosis but did have lung cancer. The clinical findings were reviewed and were not consistent with coal workers' pneumoconiosis. Dr. Hippensteel reiterated his written findings that the miner was totally disabled by cigarette smoke induced progressive obstructive impairment which led to the development of lung cancer. He again concluded the miner's death was due to lung cancer and was not caused by, contributed to by, or hastened by coal workers' pneumoconiosis. (EX 9).

CT Lung Scans

As noted above, Dr. B. Banning read the lung scan taken during the miner's hospitalization on April 25, 2002 and reported that it showed primary lung carcinoma with other chronic changes. (DX 14). Dr. J. Castle reviewed this lung scan on August 5, 2003 and agreed it showed bronchogenic carcinoma with mediastinal involvement and no evidence of pneumoconiosis. (DX 18). On August 7, 2003, Dr. J. Scatarige, a board certified radiologist, also reported that the CT lung scan of April 25, 2002 showed no evidence of coal workers' pneumoconiosis, but he found two masses and other findings of lung cancer and centrilobular emphysema. (DX 19). Similarly, on August 7, 2003, Dr. Hippensteel also reported the CT lung scan was negative for pneumoconiosis. (DX 20). Finally, on October 13, 2003, Dr. J. Wiot, a board certified radiologist and B-reader, stated the April 25, 2002 CT lung scan showed changes consistent with significant malignancy with mediastinal invasion and mediastinal nodes with significant pleural disease. Dr. Wiot also stated there was no evidence of coal workers' pneumoconiosis on this CT lung scan.

CONCLUSIONS OF LAW

Entitlement to Benefits

This claim must be adjudicated under the regulations at 20 C.F.R. Part 718 because it was filed after March 31, 1980. The regulations provide a survivor claimant must establish, by a preponderance of the evidence, that the miner had pneumoconiosis, that his pneumoconiosis arose from coal mine employment, and that his death was due to pneumoconiosis. 20 C.F.R. § 718.205. The Part 718 regulations provide that a survivor is entitled to benefits only where the miner's death was due to pneumoconiosis. 20 C.F.R. § 718.205(a). As a result, the survivor of a miner who was totally disabled due to pneumoconiosis at the time of death, but died due to an unrelated cause, is not entitled to benefits. Under § 718.205(c)(4), if the principal cause of death is a traumatic injury or a medical condition unrelated to pneumoconiosis, the survivor is not entitled to benefits unless the evidence establishes that pneumoconiosis was a substantially contributing cause of the death. The regulations also provide that in a Part 718 survivor's claim, the Judge must make a threshold determination as to the existence of pneumoconiosis arising out of coal mine employment, under 20 C.F.R. § 718.202(a), prior to considering whether the miner's death was due to the disease under § 718.205. 20 C.F.R. § 718.205(a).

Existence of Pneumoconiosis

30 U.S.C. § 902(b) and 20 C.F.R. § 718.201 define pneumoconiosis as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." The definition is not confined to "coal workers' pneumoconiosis," but also includes other diseases arising out of coal mine employment, such as anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, silicosis, or silicotuberculosis.[3] 20 C.F.R. § 718.201. The term "arising out of coal mine employment" is defined as including "any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to or substantially aggravated by dust exposure in coal mine employment."

Pursuant to § 718.202, a living miner can demonstrate the presence of pneumoconiosis by: 1) x-rays interpreted as being positive for the disease; 2) biopsy evidence; 3) the presumptions described in §§ 718.304, 718.305, or 718.306, if found to be applicable; or 4) a reasoned medical opinion which concluded the disease is present, if the opinion is based on objective medical evidence such as blood-gas studies, pulmonary function studies, physical examinations, and medical and work histories.

The chest x-ray evidence includes one positive x-ray reading from July 13, 1990 by a highly qualified board certified radiologist and B-reader and two negative readings by an equally qualified physician from March 13, 1989 and December 16, 1993. The negative readings in this case are well supported by the CT lung scans which were all negative for pneumoconiosis. Therefore, I find the x-ray evidence of record is not sufficient to establish the presence of pneumoconiosis under the provisions of § 718.202(a)(1). Similarly, the biopsy report of April, 2002 established the presence of squamous cell carcinoma in the lung but did not report any findings of pneumoconiosis. There was no autopsy performed in this case. Therefore, the evidence is insufficient to establish pneumoconiosis under the provisions of § 718.202(a)(2). The presumptions are not applicable in this case, so pneumoconiosis is not established under § 718.202(a)(3).

Finally, pneumoconiosis can be established under the provisions of § 718.202(a)(4) by reasoned medical opinion. Initially, I note Drs. Castle and Hippensteel considered evidence which was submitted in the miner's claim in preparation for their reports. These physicians, therefore, considered medical evidence that was not properly admitted in this survivor's claim and is not in compliance with the evidentiary limitations set forth in the regulations. Therefore, I have excluded the reports of Drs. Castle and Hippensteel from consideration under § 718.202(a)(4) because their opinions as to the presence of pneumoconiosis are inextricably tied to evidence which has not been admitted into the record in this claim. *Dempsey v. Sewell Coal Co.*, 23 B.L.R. 1-47 (2004)(en banc).

The only other medical opinion report is the questionnaire filled out on February 18, 2003 by Dr. Hall, the miner's treating physician. In that questionnaire, Dr. Hall stated it was his

[3] The regulations define "pneumoconiosis" as a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or "clinical", pneumoconiosis and statutory, or "legal", pneumoconiosis.

opinion the miner had black lung. I have considered the fact that Dr. Hall stated he was the miner's treating physician. His opinion must, therefore, be considered pursuant to § 718.104(d). This regulation states that the relationship between the treating physician and the miner may constitute "substantial evidence" towards assigning controlling weight to a treating physician's opinion, provided it is credible "in light of its reasoning and documentation, other relevant evidence and the record as a whole." § 718.104(d)(5). The regulations list several factors to be considered including the nature of the relationship, the duration of the relationship, the frequency of the treatment, and the extent of the treatment. 20 C.F.R. § 718.104(d). In this case, the hospital records do establish Dr. Hall treated the miner during his hospitalization in April and again in August of 2002. These records do not, however, indicate how often Dr. Hall saw the miner outside of the hospitalizations nor do they indicate the extent of treatment. The hospital records do indicate findings on physical examination, chest x-ray, and other pulmonary testing including the CT lung scan. These records, however, do not discuss the presence or absence of pneumoconiosis. Dr. Hall's answer on the questionnaire that he had diagnosed black lung based on the chest x-ray does not reference the chest x-ray reading he relied upon or the qualifications of the physician performing the reading. In addition, as noted above, all of the readings of the April, 2002 CT lung scan reported extensive lung cancer, none of them reported pneumoconiosis, and several of the reports specifically concluded there was no evidence of pneumoconiosis. Similarly, the biopsy obtained during the miner's hospitalization evidenced squamous cell lung carcinoma but no findings of pneumoconiosis were reported. Under these circumstances, where the available medical records associated with Dr. Hall's treatment do not support his statements on the questionnaire and where the CT lung scan reports and biopsy report provide contrary probative evidence, I find Dr. Hall's report shall not be accepted under the provisions of § 718.109(d). Furthermore, because his statements on the questionnaire are without support in the record and because they are contradicted by the unanimous CT lung scan reports of April, 2002, I find Dr. Hall's answers on the questionnaire are not sufficient to establish the presence of pneumoconiosis under the provisions of § 718.202(a)(4).

In conclusion, I find the evidence is insufficient to establish the presence of pneumoconiosis under any of the methods set forth at § 718.202(a) and when all the evidence is weighed together pursuant to *Island Creek Coal Co. v. Compton*, *supra*. Thus, I find that Claimant has not established that the deceased miner had pneumoconiosis.

Cause of pneumoconiosis

Once the miner is found to have pneumoconiosis, the claimant must show that it arose, at least in part, out of coal mine employment. 20 C.F.R. § 718.203(a). If a miner who suffered from pneumoconiosis was employed for ten years or more in the coal mines, there is a rebuttable presumption that the pneumoconiosis arose out of such employment. 20 C.F.R. § 718.203(b). Since the miner had ten years or more of coal mine employment, the claimant receives the rebuttable presumption that miner's pneumoconiosis arose out of coal mine employment. This issue is moot, however, since the evidence does not establish the presence of pneumoconiosis.

Death due to Pneumoconiosis

Subsection 718.205(c) applies to survivor's claims filed on or after January 1, 1982 and provides that death will be due to pneumoconiosis if any of the following criteria are met:

> (1) competent medical evidence established that the miner's death was caused by pneumoconiosis; or
>
> (2) pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or the death was caused by complications of pneumoconiosis; or
>
> (3) the presumption of § 718.304 [complicated pneumoconiosis] is applicable.

The amended regulations provide that pneumoconiosis is a 'substantially contributing cause' of a miner's death if it hastens the miner's death. 20 C.F.R. § 718.205(c)(5).

There is no evidence of complicated pneumoconiosis and, therefore, § 718.205(c)(3) is not applicable to this case. Similarly, no evidence establishes the miner's death was caused by pneumoconiosis and, therefore, § 718.205(c)(1) is not applicable to this case.

Dr. Hall did state, however, that black lung contributed to the development of the lung cancer which caused the miner's death. Dr. Hall did not include any rationale or support for this statement. Additionally, his own report was internally inconsistent in that he also stated that pneumoconiosis did not contribute to the miner's death. The deposition statements and reports of Drs. Castle and Hippensteel will be considered regarding the cause of the miner's death because, with regard to the issue of death, they relied upon evidence which has been admitted into the record. These two physicians agreed that the lung cancer which developed was not related to the miner's coal mine dust exposure and was related to his extensive smoking history. These two physicians cited medical studies and articles in support of that statement. The well supported findings of Drs. Castle and Hippensteel outweighs the contrary unsupported and equivocal findings by Dr. Hall. Therefore, I find the evidence is not sufficient to establish the miner's death was due to pneumoconiosis under the provisions of § 718.205(c)(2).

Thus, upon careful consideration of the medical reports of record, I find Claimant has failed to establish by a preponderance of the evidence that the miner's death was due to pneumoconiosis under the provisions of § 718.205(c)(2). In conclusion, I find the medical reports do not establish that miner's death was caused by, substantially contributed by, or hastened by pneumoconiosis.

Conclusion

Claimant has not established that the miner had pneumoconiosis which arose out of his coal mine employment. In addition, the evidence does not establish the miner's death was due to pneumoconiosis under any of the methods set forth in § 718.205(c). Accordingly, Claimant is not entitled to survivor's benefits under the Act.

Attorney's Fees

The award of attorney's fees under the Act is permitted only in cases in which the claimant is found to be entitled to the receipt of benefits. Because benefits are not awarded in this case, the Act prohibits the charging of any fee to the Claimant for the representation services rendered to her in pursuit of the claim.

ORDER

It is ordered that the claim of GWENDOLYN FORD for benefits under the Black Lung Benefits Act is hereby DENIED.

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MICHAEL P. LESNIAK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.458 and 725.459. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Allen Feldman, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).